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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/784,676 | 02/23/2004 | Katherine M. Burnett | J&J-1995CNT | 1891 |

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| EXAMINER | |
|---|---|
| EVANS, CHIVONNE LAURIE | |
| **ART UNIT** | **PAPER NUMBER** |
| 3761 | |

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/784,676 | BURNETT ET AL. | |
| | Examiner | Art Unit | |
| | Chivonne L. Evans | 3761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *23 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☒ Claim(s) *6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Objections*

1. The use of the trademarks PGI 6757, PGI67DCO, and PGI 6705 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

2. Claim 6 is objected to because of the following informalities: trademarks are inappropriately used. Appropriate correction is required.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-5 and 8-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,719,740. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-5 of the patent forestall or anticipate claims 1-5 and 8-14.

Claims 1-4 and 11-14 in the application are collectively disclosed in claims 1 of Patent No. 6,719,740.

Claim 5 is disclosed in claim 2 of Patent No. 6,719,740.

Claims 8-10 in the application are collectively disclosed in claims 3-4 of Patent No. 6,719,740.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Verdicchio et al (6156323). Verdicchio discloses a delivery pouch composed of a nonwoven hydrophobic delivery facing (top layer), a backing and a coating of active (topical skin care agent) material, which include cleansers, powders and other skin care products (Column 6, Lines 42-44), in which the pouch is located between the delivery face and backing (Column 3, 53-56). The delivery layer taught by Verdicchio is an aperture film having apertures the size of 2 mils (converts to 50.8 microns), within the

applicant's range of 25-75 microns (Column 5, 20-21). Also, Verdicchio teaches that the apertures are in the amount of 100-10,000 apertures per square *inch* on the nonwoven hydrophobic delivery face (Column 5, 9-21), which falls within the applicants disclosed values of 10 to 50 apertures per square *centimeter* (i.e. 50 apertures/$cm^2$ = 322.5 apertures/$inch^2$; 40 apertures/$cm^2$ = 266.7 apertures/$inch^2$ ...etc.).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 4 -6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verdicchio (6156323) in view of Zelazoski (5536555). Verdicchio discloses the invention substantially as claimed except for a top layer and bottom layer comprised of an apertured laminated film laminated to a natural fiber or a synthetic fiber hydrophobic nonwoven material and an apertured layer. Zelazoski teaches a quilted film laminate with slits, whereas an aperture is fined as an opening, such as a hole, gap, or *slit,* that is laminated to a substrate layer such as fibrous non-woven materials (Column 7, Lines 57-66) that is used as a cover material for personal care products (Column 2, lines 5-7) to promote fluid transfer within the applied system. It would have been obvious at the

time the invention was made to a person having ordinary skill in the art to modify Verdicchio's invention with Zelazoski's teachings to provide an topical solution delivery system with a porous/apertured covering to enhance fluid exchange during application of the topical solution.

9. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verdicchio (6156323) as applied to claims 4 and 5 above in view of Zelazoski and further in view of Roe et al (5998695). Verdicchio teaches a delivery system, which has been described in paragraph 2 of this action, which has a pouch where a topical agent can be stored, however, Verdicchio lacks a water-soluble film made of polyvinyl alcohol, containing a topical skin care agent. Roe teaches a polyvinyl alcohol water-soluble film, in which skin care compositions, such as colloidal oatmeal, can be embedded in to the film (Column 14, Lines 9-33 and Column 18, Lines 22-26). It would have been obvious to one of ordinary skilled in the art at the time of the invention to modify Verdicchio's delivery system by incorporating a water soluble film containing a topical skin care agent as taught by Roe to provide less mess and more convenience being that the film can be directly inserted in the pouch at the time of use.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gruenbacher (6508602) and Duden at el (6783294) are related to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chivonne L. Evans whose telephone number is 571-272-8686. The examiner can normally be reached on between 6:30-3:30, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chivonne L Evans
Examiner
Art Unit 3761

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TATYANA ZALUKAEVA
PRIMARY EXAMINER